IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JENNIFER MILLER	:	CIVIL ACTION
v.	:	
MATTHEW KENTOSH, et al.	:	No. 97-6541

MEMORANDUM AND ORDER

BECHTLE, J. JUNE , 1998

Presently before the court in this Title IX and civil rights action are defendants Springford Area School District (the "School District"); School District Superintendent Dr. Genevieve Coale, ("Coale"); and Spring-Ford High School Principal Michael Fabel's ("Fabel") (collectively, the "School Defendants") joint motion to dismiss and for partial summary judgment and plaintiff Jennifer Miller's ("Plaintiff") response thereto.[1] For the reasons set forth below, the motion will be granted in part and denied in part.

I. BACKGROUND

The facts, viewed in the light most favorable to the non-moving party, are as follows. Sometime prior to 1986, defendant Matthew Kentosh ("Kentosh") began teaching percussion classes at Spring-Ford High School ("Spring-Ford").

1. Named defendant Matthew Kentosh is represented by separate counsel and did not file a motion to dismiss.

is located in Royersford, Pennsylvania and within the School District. The programs and activities sponsored by the School District and Spring-Ford are educational programs and activities for which federal funding is received under Title IX. (Compl. ¶ 3.)

In 1994, Plaintiff, while a minor, began attending Spring-Ford. (Compl. ¶ 9.) While she was a student at Spring-Ford, Plaintiff participated in the percussion band program taught by Kentosh. Kentosh and Plaintiff began having a romantic relationship that included sexual activity. (Compl. ¶ 14.) Plaintiff attempted to end the relationship. (Compl. ¶ 30.) Kentosh refused to end the relationship and conditioned her participation in the band on her submission to his sexual advances. (Compl. ¶¶ 31-32.) The supervisory officials at Spring-Ford were aware of Kentosh's improper relationship with Plaintiff and failed to take steps to end it. (Compl. ¶¶ 15, 26.) To Plaintiff's detriment, Coale and Fabel adopted a policy to permit Kentosh's conduct to continue without interference. (Compl. ¶ 26.)

On the evening of October 9, 1995, a police officer found Kentosh and Plaintiff engaging in sexual activity in a parked car. Kentosh was arrested. (Pl.'s Mem. Opp. Mot. Dismiss at 2-3.) The police initiated a criminal investigation. At Spring-Ford the next morning, Kentosh informed Fabel of the

arrest. Fabel asked Kentosh to leave the school and not return. Fabel then called Coale and reported the event. (Coale Aff. ¶ 5.) Fabel later filed a report of suspected child abuse with the police department. (Mem. Supp. Dismiss Ex. F; Fabel Aff. ¶ 6.) On October 11, 1995, Kentosh submitted his resignation. (Mem. Supp. Dismiss Ex. D.) On October 23, 1995, the School District accepted his resignation and deemed it effective as of October 16, 1995. Id. Ex. E; Fabel Aff. ¶ 4. The local paper wrote an article about the occurrence and Plaintiff was harassed by other students and subjected to public ridicule. Id.

On October 22, 1997, Plaintiff filed this action alleging claims under Title IX and 42 U.S.C. §§ 1983 and 1988. Pursuant to 28 U.S.C. § 1367,[2] she also brings state law claims of negligence, assault and battery and outrageous conduct against Kentosh.[3] Plaintiff seeks compensatory and punitive damages as well as attorneys fees.

On December 24, 1997, the School Defendants filed the instant motion to dismiss under Rule 12(b)(6) and for partial summary judgment on the Title IX claim. On February 4, 1998,

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2. Because Plaintiff's claims arise under federal law, this court has jurisdiction. 28 U.S.C. § 1331. It has supplemental jurisdiction over her state law claims under 28 U.S.C. § 1367.

3. Plaintiff's Complaint alleges state law claims against all defendants. However, at a hearing before this court on March 4, 1998, Plaintiff withdrew the state law claims against all defendants except Kentosh.

Miller filed a response to the motion. On May 21, 1998, the court heard oral argument on these motions and invited the parties to submit supplemental memoranda after discovery closed. On June 8, 1998, discovery closed. On June 10, 1998 the School Defendants submitted a supplemental motion, and on June 11, 1998, Plaintiff filed a supplemental motion.

II. DISCUSSION

A. The Motion to Dismiss

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a claim. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). In reviewing a motion to dismiss, the court must accept all allegations of fact in the plaintiff's complaint, "construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989)(quotation omitted). If "it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief," the complaint will be dismissed. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

The School Defendants ask the court to dismiss Count II (42 U.S.C. § 1983) against Coale and Fabel, Count IV (attorney

fees) against Coale and Fabel and Count V (state law tort claims) against each of them for failure to state a claim upon which relief can be granted.

1. Count II--42 U.S.C. § 1983
Miller v. Coale and Fabel

To maintain a cause of action under 42 U.S.C. § 1983, Plaintiff must show that the alleged conduct was committed by a person acting under the color of state law and that the conduct deprived Plaintiff of rights, privileges or immunities secured by the Constitution or the laws of the United States. 42 U.S.C. § 1983. Section 1983 is not a source of substantive rights, rather it provides a method for vindicating federal rights conferred in other laws. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

Coale and Fabel are School District officials, and they have not contested the allegation that they were acting under color of state law. In Count II of the Complaint, Plaintiff alleges that Coale and Fabel supervised and controlled Kentosh. (Compl. ¶ 25.) She further alleges that Coale, Fabel and their supervisory agents had actual knowledge of his conduct with Plaintiff and that they adopted and implemented a policy to permit the wrongful conduct to continue without interference. (Compl. ¶ 26.) Plaintiff alleges that the implementation of this policy caused her damages. Id. The School Defendants argue that this claim against Coale and Fabel must be dismissed for two reasons. First, because the claims are subsumed by Plaintiff's

Title IX claim and second, because Coale and Fabel are immune from suit.

Coale and Fabel argue that Plaintiff's Section 1983 claims against them should be dismissed because the claims are really against the School District and pursuant to the "Sea Clammers doctrine" as set forth in Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1, 12 (1981), the Section 1983 claims are subsumed by the Title IX claim. (Mem. Supp. Dismiss and Summ. J. at 12.) The court agrees in part.

In Sea Clammers, the Court held that when "a state official is alleged to have violated a federal statute which provides its own comprehensive enforcement scheme, the requirements of that enforcement procedure may not be bypassed by bringing suit directly under § 1983." Sea Clammers, 453 U.S. at 12. The United States Court of Appeals for the Third Circuit held that this doctrine dictates that in a case alleging both Title IX and Section 1983 claims, the Section 1983 claims are subsumed by the Title IX claims and precluded. Williams v. School Dist. of Bethlehem, 998 F.2d 168, 176 (3d Cir. 1993), cert denied, 510 U.S. 1043 (1994). The court agrees that the Section 1983 claims against Coale and Fabel in their official capacities are subsumed by the Title IX claim because they are, in effect, claims against the School District and are covered by the Title

IX claim. The court will dismiss the Section 1983 claims against Coale and Fabel in their official capacities.

However, while the claims against Coale and Fabel in their official capacity are effectively against the School District, the claims against Coale and Fabel individually are not and they must be analyzed separately. Coale and Fabel argue that the Section 1983 claims against them in their individual capacities should be dismissed under the doctrine of qualified immunity. "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory constitutional rights of which a reasonable person would have known." In re City of Philadelphia Litigation, 49 F.3d 945 (3d Cir.), cert. denied, 116 S.Ct. 176 (1995). The burden is on the defendant to show that he or she "did not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Stoneking v. Bradford Area School Dist., 882 F.2d 720, 726 (3d Cir. 1989).

Because the court has before it a motion to dismiss rather than a motion for summary judgment on this claim, the court must take Plaintiff's allegations as true and view all facts in the light most favorable to Plaintiff. Plaintiff alleges that Coale, Fabel and other supervisory officials knew of Kentosh's conduct and failed to take any steps to end it.

(Compl. ¶ 15, 26.) A teacher's sexual harassment of a student is an intrusion of the student's bodily integrity and thus a violation of a constitutional right. See Stoneking, 882 F.2d at 727 (finding sexual molestation and sexual assault are intrusions of bodily integrity). Plaintiff alleges facts from which a jury could find that by failing to stop Kentosh, Coale and Fabel violated clearly established constitutional rights of which they were or should have been aware. The court will not dismiss the Section 1983 claims against Coale and Fabel in their individual capacities.

2. Count IV--42 U.S.C. § 1988 Attorney's fees Miller v. Coale and Fabel

In Count IV, Plaintiff asks for attorney's fees and costs under 42 U.S.C. § 1988. Because the court will not dismiss the Section 1983 claims against Coale and Fabel in their individual capacities, the court will not dismiss this count.

3. Count V--State Law Claims Miller v. All Defendants

Because Plaintiff has withdrawn these claims against all defendants except Kentosh, and Kentosh takes no position with regard to the motions presently before the court, the court will deny the motion with regard to Count V as moot.

B. The Motion for Summary Judgment

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The court must draw all justifiable inferences in the light most favorable to the non-moving party. Id. If the record thus construed could not lead a trier of fact to find for the non-moving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

In response to a motion for summary judgment, the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings, but must "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 322. If the non-moving party does not so respond, summary judgment shall be entered in the moving party's favor because "a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 322-23.

1. Count III--Title IX
Miller v. Spring Ford Area School District

The School Defendants ask the court to grant summary judgment in the School District's favor on Count III (Title IX) because Plaintiff cannot show that individuals with authority to remedy the alleged Title IX violation had actual knowledge and were deliberately indifferent. Title IX was enacted in 1972 with two objectives: to avoid the use of federal resources to support discriminatory practices and to provide a private remedy against those practices. Gebser v. Lago Vista Indep. Sch. Dist., No. 96-1866, 1998 WL 323555, at *6 (U.S. June 22, 1998). Title IX conditions an offer of federal funding on a promise by the recipient not to discriminate and permits revocation of funding in the event of a violation. Id.

In Count III of her Complaint, Plaintiff alleges that she made numerous attempts to end the relationship with Kentosh. She also alleges that each time she attempted to do so Kentosh threatened and coerced her to continue the relationship. (Miller Aff. ¶¶ 11-12.) She also alleges that he conditioned her academic and musical advancement and opportunities upon submission to his sexual demands. (Compl. ¶¶ 28-32.) She alleges that supervisory officials knew of Kentosh's conduct and acquiesced in it by failing to protect her from Kentosh and by failing to protect her from the subsequent resulting harassment by students and staff. Thus, she alleges sexual harassment that

denied her the enjoyment of rights, privileges and opportunities related to her education. (Compl. ¶ 33.)

The United States Supreme Court recently ruled that the proper standard for institutional liability under Title IX is actual knowledge. Gebser v. Lago Vista Indep. School Dist., No.96-1866, 1998 WL 323555 (U.S. June 22, 1998). That case is on point and will govern the court's consideration. In Lago Vista, the Court held that "a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the [federal fund] recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond." Lago Vista, 1998 WL 323555, at *7. The court further held that the official's response must amount to deliberate indifference to discrimination because "[u]nder a lower standard, there would be a risk that the recipient would be liable in damages not for its own official decision but instead for its employees' independent actions." Id. If a school were forced to pay a judgment in these circumstances it would divert funds from beneficial use when a recipient was willing to make changes but unaware that the need existed. Id. Thus, the an official must have actual knowledge and must make an official decision not to remedy the violation. Id. at *6.

The School Defendants argue that the School District's supervisory employees, Coale and Fabel, had no actual knowledge of the relationship between Kentosh and Plaintiff until October 10, 1995, when Kentosh told Fabel that he had been arrested by the police. (Mem. Supp. Dismiss and Partial Summ. J. at 8.) Defendants have submitted supporting affidavits by Fabel and Coale. (Coale Aff. ¶ 5 ; Fabel Aff. ¶ 4; see also Fabel Dep. 7-8.) The School Defendants further argue that they acted promptly and properly upon discovery of Kentosh's activity and therefore could not have acted with deliberate indifference. Id.

1. Official with Authority and Actual Knowledge

Plaintiff must first show that an official with authority had actual knowledge. Plaintiff has not submitted evidence sufficient to counter the School Defendants' evidence that none of the school officials had actual knowledge. Plaintiff did not depose Coale and has presented the court with no evidence that Coale had actual knowledge of Kentosh's conduct prior to Kentosh's arrest. Plaintiff's evidence consists of unsupported claims that Kentosh told her that "Mr. Fabel had spoken to [Kentosh] about [the] relationship," Fabel told Kentosh to "be careful" and that Fabel understood the relationship because he had married one of his students. (Miller Aff. ¶ 6.) Plaintiff claims that Kentosh also told her that Fabel, Vice-Principal Kodish ("Kodish"), Band Director Michael Moran

(“Moran”) and Coale spoke to him about rumors of his relationship with Plaintiff. (Miller Aff. ¶ 7.) Not only are Plaintiff's assertions inadmissible and thus beyond the court's consideration in a motion for summary judgment, they are contradicted by the admissible affidavit and deposition testimony provided by the School Defendants.

In his deposition, Kentosh denies that Fabel told him that he had married a student and attributes that information to Plaintiff. (Kentosh Dep. at 139.) Kentosh also testified that Fabel had never spoken to him about a relationship with Plaintiff. Testimony shows that Moran spoke to Kentosh about the relationship but that Kentosh denied any improper relationship, and Moran did not discuss the issue with Fabel or any other supervisory official. (Moran Dep. at 15-16, 20.) Kentosh also denies that he was told to “be careful” about his sexual relationship with Plaintiff. (Kentosh Dep. at 81.)

Plaintiff also claims that teacher Patricia Walsh-Coates (“Walsh-Coates”) and Fabel had actual knowledge because, in February 1995, Walsh-Coates read a Valentine's Day card from Kentosh to Plaintiff that referred to their relationship and she showed the card to Fabel. (Miller Aff. ¶ 8.) There is no evidence to support this claim. Plaintiff does not claim to have been present when Walsh-Coates showed this card to Fabel. Fabel denies any knowledge prior to Kentosh's arrest and Walsh-Coates

testified that after reading the card and after Plaintiff told her that there was a relationship, Walsh-Coates approached Moran, rather than Fabel with her concerns. (Walsh-Coates Dep. at 24.) Walsh-Coates also testified that the next day Plaintiff recanted and told her that there was no relationship between Plaintiff and Kentosh. (Walsh-Coates Dep. at 25.) According to the admissible evidence before the court, Walsh-Coates did not speak to Fabel or any other supervisory official about the possible improper relationship between Kentosh and Plaintiff.

The only admissible evidence that comes close to supporting Plaintiff's allegations is Kentosh's testimony that Fabel or Kodish asked him "if the band parents were still giving him a hard time about Jennifer Miller." He explained this question as a reference to Plaintiff's reputation as a troublemaker. (Kentosh Dep. at 62, 63, 70 & 77.) Fabel denies that he knew anything about the relationship before October 10, 1995 and there is no testimony from Kodish before the court. Based on the evidence, no reasonable jury could find that this comment shows Fabel knew of Kentosh's improper relationship with Plaintiff.

2. Deliberate Indifference

Plaintiff must also prove that the school district official with actual knowledge acted indifferently, or "failed to adequately respond." Lago Vista, 1998 WL 323555 at *7. Even if

the court were to find that an official who could bind the School District under Title IX had actual knowledge, there is no evidence of deliberate indifferent or failure to adequately respond.

Plaintiff has submitted evidence from which a jury could find that band instructor Michael Moran[4] and teacher Patricia Walsh-Coates had actual knowledge. However, they are not officials with authority to take corrective action under Title IX and Lago Vista. Further, even if they were officials, they responded adequately and there is no evidence of deliberate indifference. Moran and Walsh-Coates inquired of Plaintiff and Kentosh. They explained the ramifications of an improper relationship to Kentosh and Plaintiff. They also testified that Kentosh adamantly denied the relationship and that Miller recanted her statements about a relationship with Kentosh. After that date, neither Moran nor Walsh-Coates had reason to suspect that the relationship existed and therefore neither took further action. Therefore, they did not inform the School District officials.[5] No reasonable jury could find that supervisory

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4. Moran testified that in March of 1995, Walsh-Coates approached him and told him that there was a relationship. He also testified that when he confronted Kentosh, Kentosh adamantly denied that there was an improper relationship. (Moran Dep. at 11-16.) Moran also testified that he never spoke to anyone else about it. (Moran Dep. at 20.)

5. The School District also took the following actions: (continued...)

officials with the authority to bind the School District had actual knowledge of Kentosh's conduct and by the exercise of deliberate indifference failed to adequately respond.

With regard to the Title IX Count, Defendants have shown that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law. The court will grant summary judgment in favor of the School District and against Plaintiff on this count.

III. CONCLUSION

For the foregoing reasons, the School District Defendants' motion to dismiss and for partial summary judgment will be granted in part and denied in part.

(...continued)
upon Fabel's learning of Kentosh's arrest, he told Kentosh to leave the school and told him not to return; the District's accepted Kentosh's resignation; the District filed of a Report of Suspected Child Abuse; and the District assisted in Kentosh's criminal prosecution.

IN THE UNITED STATES DISTRICT COURT
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JENNIFER MILLER	:	CIVIL ACTION
	:	
v.	:	
	:	
MATTHEW KENTOSH, et al.	:	No. 97-6541

ORDER

AND NOW, TO WIT, this day of June, 1998, upon consideration of defendants Springford Area School District, Dr. Genevieve Coale and Michael Fabel's motion to dismiss and for partial summary judgment and the response thereto, IT IS ORDERED that said motion is GRANTED IN PART and DENIED IN PART:

1. The School Defendants' motion to dismiss Count II (42 U.S.C. § 1983) against Coale and Fabel in their official capacities is GRANTED.

2. The School Defendants' motion to dismiss Count II (42 U.S.C. § 1983) against Coale and Fabel in their individual capacities is DENIED.

3. The School Defendants' motion to dismiss Count IV (42 U.S.C. § 1988) against Coale and Fabel is DENIED.

4. The School Defendants' motion to dismiss Count V (state law claims)against Coale, Fabel, and Spring-Ford Area School District is DENIED as MOOT in light of Plaintiff's voluntary withdrawal of this Count as to these defendants.

5. Defendant Spring-Ford Area School District's motion for partial summary judgment with respect to Count III (Title IX) is GRANTED. Judgment on Count III is entered in favor of Spring-Ford Area School District and against Jennifer Miller.

The claims against defendant Kentosh will proceed under Counts I, IV and V. Claims against Fabel and Coale will proceed under Count II (individual capacity) and Count IV.

LOUIS C. BECHTLE, J.